85-2081

No. _____

Supreme Court, U.S.
F I L E D
JUN 18 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER Term, 1985

IN RE ROBERT K GRACE, petitioner

PETITION FOR A WRIT OF MANDAMUS TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

AND TO THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

Robert K Grace
petitioner pro se
P.O. Box 25005
St. Louis Mo. 63125

Motion to proceed without the prepayment of costs pursuant to 28 U.S.C. §1916.

Comes Now petitioner, Robert K Grace and pursuant to 28 U.S.C. sec. 1916 requests to proceed without funishing costs or security therefore. This motion is grounded in that the petitioner is a seaman suing within the admiralty jurisdiction of the Federal Courts, for wages, and his own benifit. 28 U.S.C. §1333.

Wherefore, petitioner prays that this motion be granted.

Respectfully Submitted
Robert K Grace
P.O. Box 25005
St Louis Mo 63125

Questions Presented For Review

1) Should the Eighth Circuit Court of Appeal exercise jurisdiction over an admiralty appeal where the notice of appeal was filed within the ninety day admiralty provision of Statute 28 U.S.C. §2107?

2) Should the Eighth Circuit take judicial notice of 28 U.S.C. §2107 when they were requested to under FRE 201? And should they enter an order relecting such notice?

3) Should the Court of Appeals provide an opportunity for the appellant to be heard on motion for judicial notice?

4) Should the Court of Appeals mandamus the district court to adjudicate an element of excusable neglect by and on a motion for leave to file a motion for extension to file notice of appeal?

5) Whether this court should issue mandamus on the above questions?

List of the Parties Below

The proceeding below consisted of the two parties to the action; namely:

Robert K Grace
P.O. Box 25005
St Louis Mo 63125

Heartland Transportation Inc
One Mercantile Center
Suite 3010
St Louis Mo 63101
originaly: 7501 S Broadway
St. Louis Mo 63111

And on the mandamus proceeding below, the party named is:

U.S. District Judge William Hungate
U.S. Court and Custom House
1114 Market Street
St Louis Mo 63102

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Referance to Opinions-Orders

Copies of the orders from both the Court of Appeals and the District Court that are relevant to this proceeding are attached in the appendix to this petition. None of the orders have been published.

Jurisdictional Statement

The decree petitioner seeks review of was enterred by the U.S. Court of Appeals for the Eighth Circuit on October 25,1985 in its cases bearing docket nos. 85-1671EM and 85-8085 Misc. A timely petition for rehearing was filed and the court of appeals denied the petition on November 19,1985

Petitioner believes this Cout's power to review the matter by certiorari is conferred by the provisions of 28 U.S.C. §1651(a), and Supreme Court Rules 26 and 27.

This petition, though not originally filed per the printing and size requirements of rule 33, was filed timely in the first instance on both January 9,1986 and January

25,1986. This formal document comes following both a denial to proceed on typewritten papers on March 3,1986 and a denial for reconsideration of that order enterred on June 2,1986.

Applicable Provisions of Law

28 U.S.C. §2107

"In any action, suit or proceeding in admiralty the notice of appeal shall be filed within ninety days after the entry of the order, judgment or decree appealed from, if it is a final decision,"

FRAP 4(a)5

"The district court upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this rule 4(a). Any such motion which is filed before the expiration of the prescribed time may be ex parte unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with local rules. No such extension shall exceed 30 days past prescribed time or 10 days from the date of the entry of the order granting the motion, whichever occurs later."

FRCP 6(b)(2)

"When by these rules or by notice given thereunder or by order of court an act is

required to be done or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect."

FRE 201 (c)(d)(e)(f)

(c) "A court may take judicial notice , whether requested or not."

(d) "A court shall take judicial notice if requested by a party and supplied with the necessary information."

(e) "A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed.

(f) "Judicial notice may be taken at any stage of the proceeding."

Cambell V White, 721 F2d 644,647 (8th 1983)

"We think it mandatory that the district court clerk's offices screen notices of appeal for timeliness and advise pro se litigants of the appropriateness of an extension motion. We further direct that the district court clerks prepare a notice to be given litigants that informs them of the time limitations for filing a notice of appeal under Rule 4 of the Federal Rules of Appellate Proceedure, and the necessity of filing a timely motion for extension within thirty (30) days extension period if the notice of appeal is untimely."

28 USC §1651 (a)

"The supreme Court and all courts established by act of Congress may issue all writs necessary or appropriate in aid of teir respective jurisdictions and agreeable to the usages and principles of law."

Statement of the Case

This petition seeks review by mandamus of the
the conduct of the Court below. The court is the U.S. Court of Appeals for the Eighth Circuit, and their conduct complained of herein is positively commanded as a matter of law. The case was brought to that court from the U.S. District Court, Eastern Missouri, which is the court of first instance.

The cause was instituted in the district court on November 15,1983 and designated case no. 83-2602A(3). The basis of the action was that the petitioner had: 1) enterred into an implied agreement with the defendant; or at least performed services for the defendant's benifit. 2) That defendant breeched the agreement; or at least owes plaintiff for rendering the services. 3) That the defendant

wronged plaintiff tortiously in several ways.

The District Court sustained admiralty jurisdiction of the case, 28 U.S.C. sec. 1333, as it was found to state both maritime contract and tort claims. Plaintiff -petitioner pursued discovery and was granted mot ion to compel relevant evidence. During the course of events, the District Judge expressed a leaning toward th defendants contention of the facts. His prejudged opinion appeared as dictum in a court's memorandum. Plaintiff then moved for recussal under 28 U.S.C. § 144 but the Judge refused to recuse himself.

Based on evidence within the record, pltff moved for summary judgment on the contract claim on February 28,1985. At the pre-trial conferance [1], on March 21,1935 the defendant filed a cross-motion for summary judgment on the claim. Plaintiff was forced by the court into responding to that cross motion before

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1) Trial was set and pretrial conferance set on the court's on motions. Both parties had requested continuance but were denied.

the fixed 10 day period. Nevertheless, pltff did respond to the defendant's unsupported motion with facts and affidavits. Meanwhile the court, on March 26,1985, enterred a pretrial order conferring that there was a genuine dispute between the parties.

On April 8,1985 the parties appeared for the court's docket call, and the court then advised that it was postponing the trial until the defendant's motion for summary judgement was ruled on. The Court enterred an order on April 15,1985 granting the defendant's motion for summary judgment going against the existance of the implied agreement; The order also denied plaintiffs motion for summary judgment and additionally denied to exercise jurisdiction on the maritime tort claims by calling them pendant, even though they were originally given maritime jurisdiction.

On May 31,1985 the petitioner filed a notice of appeal pursuant to the ninety day filing period of 28 U.S.C. § 2107, for admiralty

cases. The appeal was designated by the 8th circuit as 85-1671-EM. In that court the appellee moved for dismissal of the appeal on the basis that since the notice was filed 45 days after entry of the summary judgement it was untimely for the fed rules of appellate proceedure allow only 30 days.

Faced with the situation of 28 U.S.C. § 2107 possibly being ineffectual, petitioner moved the district court for an extension to file the notice of appeal. Realizing that the motion for extension to file the notice of appeal was being made after a judicially determined period under FRAP 4(a)5, movant also filed a motion for leave to file the motion for extension. The motion for leave was grounded on excusable neglect for failure to file the extension motion within the extension period.

The excusable neglect consisted of two possible factors: 1) Reliance on a statute (28 U.S.C. §2107) that has not been repealed. This is a substantial ground, and has been

already held to be excusable neglect. See: Feeder Line Towing Serv. V Toledo Peoria & Western RR Co., 539 F2d 1107 (7th 1976) And this reason was presented to the court. The second factor was that the district court failed to abide by a ministerial directive of the Eighth Circuit.that commanded the clerk of the court to provide a notice to all litigants. The notice was: to inform a party of the necessary motions and the time requirment for filing them. The directive is set forth as a matter of law in Cambell V White, 721 F2d 644 at 647. The petitioner never recieved such notice, and further, did not learn of the Cambell directive or the necessity of filing extension motion within a period until after the extension period expired.

On September 12,1985 the district court denied to grant leave to file the extension motion. Its stated reason was that the motion for leave was untimely. This ruling prompted both an appeal and an application for a writ of mandamus in the Eighth Circuit. Both the

appeal and application were designated as 85-8085 Misc. by the Circuit Court. On Oct. 25,1985 the court enterred an order that both dismissed appeal 85-1671-EM(from summary judg.) for lack of a timely notice and also denying to grant relief on the ruling concerning leave by either appeal or mandamus.

A timely petition for rehearing of the 85-8085 Misc. matters was filed. At the same time, petitioner, also filed a motion to vacate that part of the October 25,1985 order that dismissed 85-1671 and to further reinstate it upon the courts calender. The petition for rehearing of 85-8085 was grounded on the belief that the court of appeals overlooked the factors that constituted an abuse of discretion in the district court's denial of leave. A

Also, the petition was grounded in that the Court misapprehended the relief sought by mandamus. The motion to vacate and reinstate 85-1671 was grounded on reason that the

28 U.S.C §2107 is still operative as law; It has been amended five times within the pa past year and Congress has left the 90 day admiralty provision in tact, thus superceding the Federal Rules of Appellate Proceedure. However, on November 19,1985 the Court denied the petition for rehearing and the motion to vacate and reinstate.

Following these denials, appellant-petit ioner filed three motions; namely: 1) A motion for reconsideration and vacation of the November 19,1985 decree; 2) A motion for the court to take judicial notice of 28 U.S.C. § 2107, and also requesting a hearing on it; and 3) A motion for the court to allow a hearing or rehearing of these matters in another Circuit Court of Appeals.

These three motions were contained within the same document, and were argued in the same memorandum. However, on December 6,1985 the court of appeals enterred an order stating only: "Appellant's motion for recons-

ideration or rehearing of his cases in another Circuit Court of Appeals is denied." The court failed to rule on all the motions.

Thus comes this petition for review and relief by mandamus.

Relief Sought

1) An order compelling the Eighth Circuit to exercise appellate jurisdiction on its case 85-1671-EM stating as reasons therefore that 28 U.S.C. §2107 is an effective statute, and as a matter of law the appellant's notice of appeal thereon is timely as based on the 90 day admiralty provision of such statute.

2) An order compelling U.S. Circuit Judges George G. Fagg, Theodore McMillian, and Donald R. Ross to take judicial notice of 28 U.S.C. §2107 and to enter an order stating that statute either is or is not effective.

3) An order compelling U.S. Circuit Judges George G. Fagg, Theodore McMillian, and Donald R Ross to issue a writ of mandamus compelling the district court to adjudicate

the element of excusable neglect upon the motion for leave therein filed. In the alternative, an order compelling U.S. District Judge William L Hungate to adjudicate the element of excusable neglect upon the motion for leave.

All of the relief sought enumerated herein from the appellate proceedings are directed to the Circuit Justices as named above; That tribunal acted on all matters concerned with this petition. Therefore, petitioner further requests relief by:

4) An order vacateing or an order compelling the Eighth Circuit to vacate all of its orders inconsistant with the relief sought and would be granted by this court.

Argument

The matter coming before this Court involve the Court of Appeals jurisdiction to hear an appeal pursuant to the lawful filing of the notice of appeal, the court's failure to take judicial notice of the law governing filing

notice of appeal (contrary to judicial notice) and the court's failure to correct the district court's usurpation of power. For this it is well settled that, "Extraordinary writs are reserved for really extraordinary causes, and then only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." Platt V Minnesota Mineing and Manufacturing, (US Ill 1967) 376 US 240, 84 SCt 769, 11 LEd2d 674.

This argument will be presented categorically according to the questions as presented. Throught this petition the petitioner is mindful that in order to attain the relief he seeks he must satisfy burden of showing that his right to issuance of the writ is clear and indisputable. Kerr V U.S. Dist. Court for Dist of Calif., (1976) 426 US 394, 96 SCt 2119

The court of appeals dismissed an appeal for lack of a timely notice of appeal. It

appears that the Court never considered applying the provisions of 28 U.S.C. §2107 Yet this statute is in effect and has apllication on the notice. The argument that the 30 day limitation of FRAP 4 superceeds §2107 is erroneous.

The Federal Rules of Appellate Proceedure were promulgated and authorized by order of Supreme Court on December 4,1967. Statute 2107 has been vigorously amended since then. All the while, congress has left in tact that part of the statute that provides ninety (90) days to file notices of appeal in cases of admiralty. Most of these revisions and amendments to 28 U.S.C. §2107 pertain to bankruptcy matters. Following is a list of these amendments and their effective dates:

PubL 95-598,Title II §248, eff Nov. 6,1978
PubL 95-598,Title IV §402(b) eff. NoV 6,78
PubL 98-249 §1(a) eff.Mar.31,1984
PubL 98-271 §(1)a eff. Apr.30,1984
PubL 98-325 §1(a) eff. June 20,1984

PubL 98-353,Title I §113 eff. June 28,84

PubL 98-353, §122 eff. July 10,1984

For the text of amendment of section 2107 to title 28 effective thru April 1,1984 ,see sec. 248 of title II PubL 95-598, November 6,1978, 92 Stat 2672, set out in appendix III to Title 28.

From this the Court of Appeals dismissal of the admiralty appeal is erroneous since the notice of appeal in issue was filed just 45 days after entry of judgment. Statute 2107 provides 90 days after entry of judgment to file notices in cases in admiralty. The Notes of advisory committee on Appellate Rules touch the concept being addressed. That discussion notes that 30 days are provided for filing notices of appeal "Except actions in admiralty or bankruptcy matters" 28 U.S.C. §2107. See also: Committee Comment FRAP 4

It is beyond a doubt that the statute 2107 and its 90 day filing provision for admiralty is in effect and operative as a matter of law.

Evidently Congress has intended the provision to remain as an integral part of the Federal admiralty law. The courts have concretly held "It is axiomatic that mandamus lies to a subordinate court to compel that court to take jurisdiction of a case properly before it or to compel it to proceed in the due exercise of its jurisdiction where it has refused to proceed." IN RE Smith & Wesson, 757 F2d 431 (1st 1985) citing: Thermtron Products Inc V Hermansdorfer, (1975) 423 US 336,352, 96 SCt 584; Will V U.S., (1967) 389 US 90,95, 86 SCt 269,273; Marbury V Madison, (1803) 1 Cranch 137, 5 US 137, 2 LEd 60; citations ommitted.

The next question to be addressed is the matter of the Court of Appeals not taking judicial notice of 28 U.S.C. §2107 when they were formally requested to do so. Federal Rules of Evidence 201 provides the criteria for taking judicial notice. Part (d) of it specifically dictates that "A court shall

take judicial notice if requested by a party and supplied with the necessary information." The word shall as used therein leaves no discretionary flexibility. The court's duty is positively commanded as a matter of law. "A writ of mandamus is an extraordinary remedy reserved for such circumstances as failure to complete a ministerial act whose performance is positively commanded and so plainly prescribed as to be free from doubt." See: US ex rel McQueen V Wanglin, 527 F2d 579 (8th 1975)

In the instant case, petitioner properly requested the 8th Cir. to take Judicial notice of 2107. On other cases, the Eighth Cir. has specifically noted that they were required to take judicial notice. See- Crimm V Missouri Pacific R Co, 750 F2d 703 (8th 1984); Kempe V U.S., 151 F2d 680,684 (8th 1945). This Court has held that courts take judicial notice of Judicial Code. See: St.Louis,I.M.& S.R. Co. V Starbird, 243 US 592, 61 LEd 917, 37 SCt 462 (1916)

The doctrine of judicial notice applies at common law to public or general statutes of the legislature. Cambell V Mincy 413 FSupp 16 (D.C.Miss.1975) affirmed (5th Cir) 542 F2d 573. There is no doubt that judicial notice is required at the appellate level. Part (f) of the rule FRE 201 makes clear this authorization. See: U.S. V Jones, 580 F2d 219 49 ALR Fed 904 (6th 1978) This court is even required to take judicial notice of matters in the record of a case formally before it. U.S. V Pink, 315 US 203; National Fire Ins. Co. V Thompson 281 US 331, 50 SCt 288.

Additionally, petitioner had requested a hearing on the issue of 2107's application. Part (e) of rule 201,FRE, provides that a party is entitled to be heard. In any event, according to cannon 3(4) of the Code of Judicial Conduct, a judge should accord to all parties full right to be heard. But the petitioner was not heard on the matter of 2107's effectiveness either on paper or orally.

The writ of mandamus is appropriately issued when there is a usurpation of power or an abuse of discretion. Shalagenhauf V Holder, 379 US 104, 85 SCt 234, 13 LEd2d 152(1964)

Judicial notice is the law. And generally a "petition for mandamus invokes courts jurisdiction to determine whether lower court acted beyond its power as authorized by statute or rule." Schmidt V Fuller Brush, 527 F2d 532 (8th 1975) Further, "Mandamus is restricted to those situations which lower court has an action which has no power to take or when court acted and so abused its discretion that there is sort of usurpation of power which will justify entry of writ." U.S V Dorfman 690 F2d 1217 (7th 1982)

The final question presented concerns the court of appeal's refusal to mandamus the district court to adhere to due process standards on the motion for leave. It appears that both the district court and court of appeals confused the motion for leave with

the motion for extension. However,as the merits of the motion for leave are set forth there is nothing confusing about the matter. The motion for extension could not have been filed within the extension period as autorized under FRAP 4(a)5 because of excusable neglect.

A motion for leave in this situation is not only impliedly a percievable solution to resolve the issue of excusable neglect for the late filing of the extension motion, it seems sexpressly authorized under FRCP 6(b)(2) This rule specifies that upon a motion for le leave, based upon excusable neglect, the district court can permit an act to be done that should have been done within a specified period. When the district court denied leave on timeliness grounds, it violated due process as dictated by FRCP 6(b)(2).

On prior occassions, the district court involved has taken the initiative during the course of the proceedings to not only grant leave to the pltff and defendant to file

documents out of time, but also has expressly notified the parties that leave was required. For instance, on October 22, 1984 the court sent plaintiff-petitioner a Notice to Counsel advising that leave was required to file a memorandum that had been filed on October 18,1984. Leave was granted on motion November 2,1984. Another instance happened in like manner by the court sending Notice to Counsel requiring leave on October 18,1985. Leave was granted on that date.

Further, the district court on numerous occasions granted leave to the defendant to file documents out of time. The defendant wa granted leave to file teir Answer to the Complaint late on such given excuse of "Doing house cleaning" and realizing that the Answer was late.

Applying to the 8th Circuit for a writ of mandamus was the appropriate thing to do. The district court's ruling of the motion for leave as untimely amounted to a usurpation of

power. Even moreso, that denial resulted in stopping adjudication of the entire extension matter thereby obstructing the allowance of the notice of appeal on 85-1671EM to be filed late. This court has held that on mandamus an appellate court's "authority is not confined to issuance of writs in aid of a jurisdiction already acquired by appeal, but extends to those cases which are within its appellate jurisdiction although no appeal has been perfected. Otherwise the appellate jurisdiction could be defeated and the purpose of the statute authorizing the writ thwarted by unauthorized action of the district court obstructing the appeal." Roche V Evaporated Milk Ass'n, 319 US 21, 63 SCt 938 citing: Exparte Bradstreet 7 Pet 634; Insurance Co. V Comstock, 16 Wall 258; ExParte U.S., 287 US 241

It is irrelevent in mandamus proceedings of what constituted the excusable neglect, which is the merits of the motion for leave.

What is important is the standards by which the district court reached its conclusion. In Platt V 3M Co., 376 US 240 (1964) this court held that "court of appeals can review by mandamus the question of whether the district court had considered the proper facters of a motion for transfer." The 8th Cir. has held that review by mandamus is appropriate where a Courts prospective appellate jurisdiction might otherwise be thwarted. National Farmers Organization V Oliver, 530 F2d 815 (8th 1976) Thus by these terms the 8th circuit had a duty to correct the district court's ruling and make the court conform to due process standards on the motion for leave.

Peculiarly, the 8th circuit had previously remanded a case for the sole purpose of the district court to adjudicate excusable neglect. Seschalchalam V Creighton University , 549 F2d 79 cert.denied 97 SCt 2974. This court should thus mandamus the Eighth Circuit to mandamus the district court, because this court

has held: "The traditional use of mandamus in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its duty when it is its duty to do so." Roche V Evaporated Milk, supra.; citations ommitted

Comeing with this petition for mandamus is a separate petition for certiorari. This court's power to issue writ of mandamus may overlap its authority to grant certiorari when the Court is acting in its supervisory capacity. See: 13 Moores, Federal Practice, sec. 817.27 p. SC17-31

Petitioner comes to this Court under 23 U.S.C. §1916 as the ward of this admiralty court.

Conclusion

Petitioner respectfully requests review of the issues presented by way of mandamus. According to Supreme Court Rule 27.2(b) the

respondants are required to respond to this petition by either formal brief or letter.

It is requested that the relief sought herein be granted. The burden of showing that the writ is justified has been clearly shown. It is further requested that this Court grant petitioner such other relief as it may deem just and proper.

Respectfully Submitted
Robert K Grace
Robert K Grace
P.O. Box 25005
St Louis Mo 63125

Affidavit of Service

I Robert K Grace, in accordance with Rule 27.2(b) and Rule 28.3 and 28.5(c), hereby depose and state that service of this petition was served on the following parties by first class mail this day of January 3,1986:

US Circuit Judges: George G Fagg, Theodore McMillian, and Donald R. Ross. 1114 Market Street St Louis Mo. 63101

U.S. District Judge William Hungate,1114 Market Street, St Louis Mo. 631c1.

Affiant further deposes and states that copy was originally served also on Heartland Transportation's attorneys: Bryan Cave, McPheter McRoberts, by first class mail on January 3, 1986 also.

3 copys of this formal document has been s served on the above named parties by first class mail this day of JUNE 12, 1986.

Affiant further deposes pursuant to 28 U.S.C. sec. 1746(2) and states:
I declare under penalty of perjury the foregoing is true and correct.

Executed on JUNE 12, 1986

Robert K Grace
Robert K Grace

Appendix

United States Court of Appeals
For the Eighth Circuit

Nos. 85-1671EM and 85-8085

Robert K Grace	*
Appellant	*
	* Appeals from the U.S.
Vs.	* District Court for
	* Eastern District of
Heartland Transportation	* Missouri
Appellee	*

Filed October 25, 1985

ORDER

Before this court are a renewed motion to dismiss the appeal in No. 85-1671 and documents recently recieved by this court from Robert K Grace and filed under docket No. 85 8085. The No 85-8085 filings can be characterized either as an appeal notice from a district

court order or September 12,1985, denying a motion for leave to file for extension of time for notice of appeal, or a petition to mandamus the district court to grant an extension.

We conclude that the notice of appeal in No 85-1671 was untimely. The renewed motion to dismiss should be and is granted and the appeal is dismissed.

The matter of granting an extension of time for a notice of appeal rests in the sound discretion of the district court, and we find no abuse of discretion in the district court's ruling of September 12,1985. Whether the No. 85-8085 documents are considered as an appeal to reverse the September 12,1985 order or a petition to mandamus the district court to grant an extension, the relief sought by Grace should be denied. Thus No. 85-8085 is also dismissed.

It is so ordered.

United States Court Of Appeals
For The Eight Circuit

No. 85-1671EM

Robert K Grace	*
Appellant	*
	*APPEAL from the U.S.
Vs.	*District Court for
	*Eastern District of
Heartland Transportation	** Missouri
Appellee	*

No. 85-8085

Robert K Grace *
Appellant *
*
Vs. *
* ORDER
Heartland Transportation
Appellee *

The appellant's motion to vacate order and to reinstate appeals, and his petition for rehearing have been filed by the court and are denied.

November 19,1985

. . .

United States Court of Appeals
For the Eighth Circuit

Nos. 85-1671EM & Misc. No 85-8085

Robert K Grace *
Appellant *
* Appeal from The U.S.
Vs * District Court for
* Eastern District of
Heartland Transportation * Missouri
Appellee *

Appellant's motion for reconsideration or rehearing of his cases in another Circuit Court of Appeals is denied.

December 6,1985

United States District Court
Eastern District of Missouri
Eastern Division

Robert K Grace, plaintiff	)	
Vs.	)	Case 83-2602A(3)
Heartland Transportation defendant	)	

Order

This matter is before the court on pro se plaintiff's motion for leave to file for extension of time for notice of appeal.

Plaintiff filed a notice of appeal on May 31,1985, on a judgment rendered April 15,1985. Plaintiff filed this motion on July 22,1985. Because this motion and the motion for an extension of time, dated July 15,1935, are untimely filed, See Fed R App P 4(a)5; Cambell V White, 721 F2d 644 (8th Cir 1983),

IT IS HEREBY ORDERED that plaintiffs motion be and the same is denied.

Dated this 12th day of September,1985

William Hungate
United STates District Judge